



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



275679

REPLY TO THE ATTENTION OF:

OCT 10 2001

The Honorable Steve Chabot
Member, U. S. House of Representatives
Carew Tower
441 Vine Street, Room 3003
Cincinnati, Ohio 45202

Dear Congressman Chabot:

Thank you for your letter of September 20, 2001, regarding the Skinner Landfill in West Chester Ohio (Site), and your correspondence with Mr. Rodney Gibbons, General Manager of Whitton Container Inc. (Whitton). The Site is listed on the National Priorities List as a Superfund Site requiring remediation pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). 42 U.S.C. §§ 9601 to 9675. The United States Environmental Protection Agency (U.S. EPA) has been working with the citizens of West Chester to address and abate any threats to the public health and environment this Site may pose.

As you requested, U.S. EPA has carefully reviewed the correspondence enclosed with your letter, as well as U.S. EPA's own records regarding Whitton's involvement at the Site. Based upon this review, U.S. EPA believes that Whitton did dispose of material containing hazardous substances at the Site. As early as 1991, U.S. EPA identified Whitton as a potentially responsible party at the Site, and Whitton has admitted that it disposed of construction debris at the Site between 1987-1990. U.S. EPA believes that the type of material commonly found in construction debris contains hazardous substances and contributes to the cost of cleaning up contaminated sites. U.S. EPA has engaged Whitton in settlement discussions, but to date has been unable to reach an agreement on an appropriate settlement.

In 1997, a group of private parties who were cooperating with U.S. EPA in designing a cleanup plan for the Site, brought a lawsuit against a larger group of parties alleging that these parties contributed to the contamination at the Site. That lawsuit was filed in the United District Court for the Southern District of Ohio at Cincinnati. The DOW Chemical Company, et al. v. Acme Wrecking Co. Inc. et al., (C-1-97-0307 and C-1-97-0308) (Consolidated Actions). As part of a case management order the Court required the litigants to participate in an extensive alternative dispute resolution process (ADR) that was conducted by a neutral allocator to assess each party's responsibility and fair share at the Site. U.S. EPA encouraged, but did not participate in, the ADR. The allocator reviewed site records, interviewed and deposed witnesses, reviewed each party's written responses to an exhaustive ADR questionnaire, and reviewed and responded to

arguments submitted by each party. After reviewing all of this information the allocator assigned Whitton a volumetric share of solid waste that accounted for both the amount and relative toxicity of Whitton's construction debris.

After the ADR was completed, the United States entered into settlement discussions with all of the parties identified as responsible for contamination at the Site. The United States reached a settlement with the vast majority of those parties. United States v. Skinner-Morgan et al. (C-1-00-424). The consent decree resolved both the government's claims and the contribution claims of the plaintiffs. The consent decree requires performance of the remedial action by a group of parties found through the ADR to have been the most responsible for the contamination at the Site, and settles out a larger group of parties found to be less responsible for the contamination. The consent decree was entered by the Court on April 3, 2001. The United States offered to settle its claims against Whitton on the same basis as the parties that entered into the consent decree, but was unable to reach a settlement. As a result, on June 29, 2001, the Department of Justice filed a claim against John J. Whitton Trucking, Inc., and several other parties for government response costs pursuant to Section 107 of CERCLA. 42 U.S.C. § 9607(a).

U.S. EPA and the Department of Justice have continued settlement discussions with Whitton to try to resolve this matter in an equitable fashion. The Department of Justice is currently reviewing financial information Whitton submitted to support its claim of an inability to pay the government's settlement offer. When review of Whitton's financial records is completed the Department of Justice and U.S. EPA will review the government's settlement position and contact Whitton. Thank you again for taking the time to inquire into this matter and I hope that a resolution of the pending case is reached in the near future.

If you have any further questions or need additional information, please do not hesitate to contact me.

Very truly yours,

/s/ original signed by
Thomas V. Skinner

Thomas V. Skinner
Regional Administrator

Control No. AL-0101757
TO: Honorable Steve Chabot
RE: Skinner Landfill

bcc: ORA W/Control Slip
AL W/Control Slip
R. Cestaric
ORA Reading File
C. Melodia (C-14J)
C. Klebenow (C-14J)

**Controlled Correspondence For
REGION 5**

CONTROL NO: AL-0101757

ORIG. DUE DATE: 10/10/2001

FILE CODE: 141-A CONGRESSIONAL CORRESPONDENCE

STATUS: PENDING

CORRES. DATE: 09/20/2001

RECEIVED DATE: 09/26/2001

ASSIGNED DATE: 10/01/2001

CLOSED DATE:

FROM: CHABOT STEVE-R/OH
ORG: U.S. HOUSE OF REPRESENTATIVES
SALUTATION: DEAR CONGRESSMAN CHABOT
CONSTITUENT: GIBBONS, RODNEY

TO: ADMINISTRATOR /
TO ORG: EPA
SUBJECT: EPA IS INCORRECT IN HOLDING CONSTITUENT'S COMPANY
RESPONSIBLE FOR DISPOSAL OF HAZARDOUS SUBSTANCES IN THE
SKINNER LANDFILL IN WEST CHESTER, OHIO

ASSIGNED: Office of Regional Counsel

COPIES OF INCOMING PROVIDED TO: ADMINISTRATOR, DEPUTY ADMINISTRATOR,
OFFICE OF ENFORCEMENT & COMPLIANCE ASSURANCE, OCIR/PETE
PAGANO

SIGNATURE: REGIONAL ADMINISTRATOR
R5 COMMENTS:

AL INSTRUCTIONS: SEND "HARD" COPY OF SIGNED, DATED REPLY ALONG WITH
ORIGINAL SLIP TO MYRTLE LASHLEY (1304A) HEADQUARTERS. FAXED
COPY ACCEPTABLE (FAX # 202/564-1828).

R5 INSTRUCTIONS: ADDRESS RESPONSE TO THE CINCINNATI, OHIO DISTRICT OFFICE, TO
THE ATTENTION OF MATTHEW B. CLARK ON THE ENVELOPE.

INCLUDE STANDARD CCs:

- 1) ORA W/CONTROL SLIP
- 2) AL W/CONTROL SLIP
- 3) R. CESTARIC
- 4) ORA READING FILE

	Assigned	Date Assigned	Code/Status	Date Completed by Assignee	Date Returned to R5 :
Lead	ORC	10/01/2001	ACTION	-	-